IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. RICHARD DINO SHAW, Petitioner.	)	2 CA-CR 2007-0009-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20174

Honorable Clark W. Munger, Judge

REVIEW GRANTED; RELIEF DENIED

Richard D. Shaw — Florence
In Propria Persona

E S P I N O S A, Judge.

¶1 Following a jury trial in 1988, petitioner Richard Shaw was convicted of four counts of molestation of a child, five counts of sexual conduct with a minor under the age of fifteen, and one count of aggravated assault. The incidents, which occurred at various times between 1981 and 1985, involved Shaw's two stepsons. Shaw was sentenced to consecutive, aggravated prison terms totaling 183 years. We affirmed Shaw's convictions

and sentences on appeal. *State v. Shaw*, No. 2 CA-CR 88-0099 (memorandum decision filed Sept. 27, 1988).

¶2 Seventeen years after he was sentenced, Shaw filed this, his first post-conviction proceeding, pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., in which he challenged the imposition of consecutive sentences and claimed he is entitled to relief under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), asking that concurrent sentences be imposed. After the petition for post-conviction relief was filed, Shaw himself and the three attorneys who have represented him during the post-conviction proceeding filed numerous amended and supplemental pleadings and motions for rehearing and reconsideration, as well as replies to the state's responses to many of these documents. During this time, the trial court entered three separate rulings related to Shaw's post-conviction petition. This pro se petition for review followed the trial court's final ruling. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶3 We first note that Shaw's petition was timely, notwithstanding that he filed it some seventeen years after his convictions became final. The Rule 32 filing deadlines are inapplicable to a defendant sentenced before September 30, 1992, who files a first petition for post-conviction relief. 171 Ariz. XLIV (1992). We also note that, because Shaw could

have challenged his consecutive sentences on appeal, but did not,[1] he is precluded from raising any sentencing-related claims now. *See* Ariz. R. Crim. P. 32.2(a)(3). However, because the trial court thoroughly addressed the issues Shaw raised in its multiple rulings, and in the interest of clarifying for Shaw the finality of his claims, we address the claims he raises on review.

¶4 The trial court summarized in two of its rulings the relevant details surrounding the ten offenses of which Shaw was convicted. Each of the aggravated sentences was enhanced pursuant to A.R.S. § 13-604(B) and (D): counts one through four were counted as one prior conviction to enhance the sentences imposed on counts five through eight; counts one through four and counts five through eight were counted as two prior convictions to enhance the sentence imposed on count nine; and counts one through four, counts five through eight, and count nine were counted as three prior convictions to enhance the sentence imposed on count ten. The trial judge told Shaw at sentencing that he was "mak[ing] sure that [Shaw was] incarcerated forever basically . . . to put [him] away for life, and for so long as [the judge] possibly c[ould]." The judge considered as aggravating factors the mental and physical trauma to the victims, Shaw's threats to inflict physical injury, the repetitive nature of the offenses, and the use of a deadly weapon in the aggravated assault.

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[1]Shaw obviously could not have raised his claim under *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004), in his 1988 appeal, a claim he nonetheless does not raise on review.

¶5 Shaw argues that his consecutive sentences were illegally imposed under the version of A.R.S. § 13-708 in effect when he committed the offenses[2] because some of the offenses were committed on a single occasion, the trial court's reliance on certain cases constituted an *ex post facto* application of the law,[3] and the trial court improperly enhanced his sentences under *State v. Hannah*, 126 Ariz. 575, 617 P.2d 527 (1980). The trial court denied Shaw's sentencing claims in its first ruling, denied his motion for rehearing in its second ruling, and again denied the sentencing claims in ruling on Shaw's motion for reconsideration. In the final ruling, the trial court explained its reasoning in detail, with the express purpose of creating an accurate record on review to satisfy *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993), which indeed it did. Because the trial court identified Shaw's sentencing arguments and ruled on them in a manner that is factually supported by the record before us and that is legally supported by the authorities cited therein, we adopt those rulings and see no need to revisit them. *See id.*

¶6 Shaw has ostensibly also raised a claim of ineffective assistance of trial counsel on review, although he has not explained why he is entitled to relief on this claim, as Rule

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[2]The version of A.R.S. § 13-708, previously § 13-904, in effect at the time Shaw committed the offenses provided: "[T]he sentence or sentences imposed by the court shall run concurrently unless the court expressly directs otherwise, in which case the court shall set forth on the record the reason for its sentence." 1977 Ariz. Sess. Laws, ch. 142, § 57; 1978 Ariz. Sess. Laws, ch. 201, §§ 104 and 108.

[3]We note that, in his petition for post-conviction relief, Shaw himself relied on the two cases he now claims the trial court improperly relied on. *See State v. Henry*, 152 Ariz. 608, 734 P.2d 93 (1987); *State v. Noble*, 152 Ariz. 284, 731 P.2d 1228 (1987).

32.9(c)(1)(ii) requires him to do. Rather, he has merely presented the standard of review for a claim of ineffective assistance of counsel. Notably, in his reply to the state's response to the supplemental petition for post-conviction relief, Shaw withdrew his claim of ineffective assistance of counsel. Moreover, Shaw raised that claim for the first time in an amended petition for post-conviction relief, filed nearly five months after the trial court had ruled on his original petition. The trial court correctly ruled that it would "not entertain new matters raised for the first time in a Motion for Rehearing" and explained that such matters must be raised in a subsequent post-conviction petition. For all of these reasons, we do not address Shaw's claim of ineffective assistance of counsel.

¶7 Therefore, although we grant the petition for review, we deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge